

Rural Housing Service, USDA

§ 3575.20

adverse effect on the environment. If construction is started prior to completion of the environmental review and the Agency is deprived of its opportunity to fulfill its obligation to comply with applicable environmental requirements, the application for financial assistance may be denied. Satisfactory completion of the environmental review process must occur prior to Agency approval of the applicant's request or any commitment of Agency resources.

§§ 3575.10–3575.11 [Reserved]

§ 3575.12 Inspections.

The lender will notify the Agency of any scheduled field inspections during construction and after issuance of the Loan Note Guarantee. The Agency may attend such field inspections. Any inspections or review conducted by the Agency, including those with the lender, are for the benefit of the Agency only and not for the benefit of other parties of interest. Agency inspections do not relieve any parties of interest of their responsibilities to conduct necessary inspections.

§ 3575.13 Appeals.

Only the borrower, lender, or holder can appeal an Agency decision. In cases where the Agency has denied or reduced the amount of final loss payment to the lender, the adverse decision may be appealed only by the lender. A decision by a lender adverse to the interest of the borrower is not a decision by the Agency, whether or not concurred in by the Agency. Appeals will be handled in accordance with the regulations of the National Appeals Division, U.S. Department of Agriculture, published at 7 CFR part 11.

§§ 3575.14–3575.16 [Reserved]

§ 3575.17 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart provided the Administrator determines that application of the requirement or provision, or failure to take action in the case of an omission, would adversely affect the Govern-

ment's financial interest. Requests for exceptions must be in writing by the State Director.

§§ 3575.18–3575.19 [Reserved]

§ 3575.20 Eligibility.

(a) *Availability of credit from other sources.* The Agency must determine that the borrower is unable to obtain the required credit without the loan guarantee from private, commercial, or cooperative sources at reasonable rates and terms for loans for similar purposes and periods of time. This determination shall become a part of the Agency casefile. The Agency must also determine if an outstanding judgment obtained by the United States in a Federal Court (other than the U.S. Tax Court) has been entered against the borrower or if the borrower has an outstanding delinquent debt with any Federal agency. Such judgment or delinquency shall cause the potential borrower to be ineligible to receive a loan guarantee until the judgment is paid in full or otherwise satisfied or the delinquency is cured.

(b) *Legal authority and responsibility.*

(1) Each borrower must have, or will obtain, the legal authority necessary to construct, operate, and maintain the proposed facility and services. They must also have legal authority for obtaining security and repaying the proposed loan.

(2) The borrower shall be responsible for operating, maintaining, and managing the facility and services, and providing for the continued availability and use of the facility and services at reasonable rates and terms.

(i) These responsibilities must be exercised by the borrower even though the facility may be operated, maintained, or managed by a third party under contract, management agreement, or written lease.

(ii) Leases may only be used when this is the only feasible way to provide the service, is the customary practice to provide such service in the State, and must provide for the borrower's management control of the facility.

(iii) Contracts, management agreements, or leases must not contain options or other provisions for transfer of ownership.